

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

November 16, 2006

A meeting of the Board of Environmental Protection was held on Thursday, November 16, 2006 at the Holiday Inn / Ground Round, Augusta, Maine. Chairman Matt Scott called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Ernest Hilton, Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, M. Wing Goodale, Matt Scott, Nancy Ziegler

Virginia Plummer arrived at 09:30 a.m.

Absent: Denis Culley

<u>Staff:</u>	Hetty Richardson	Bureau of Land and Water Quality
	Mike Mullen	Bureau of Land and Water Quality
	Andrew Fisk, Director	Bureau of Land and Water Quality
	David Courtemanch	Bureau of Land and Water Quality

Others: David P. Littell, Commissioner
Carol Blasi, Assistant Attorney General
Cynthia S. Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 3:55 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Liquefied Natural Gas (LNG): Both companies [Downeast and Quoddy Bay] have communicated their intent to submit applications to FERC and DEP. Quoddy Bay may file with DEP by Thanksgiving and FERC by the New Year. The Department continues to research processing options and is checking on the ability of the BEP to assume licensing jurisdiction prior to the application being accepted as complete for processing. It is likely that the Department will seek Board jurisdiction at an upcoming regular meeting, either December 7th or 21st.

QUESTIONS:

Board member Ernest Hilton asked if the processing timeframe is 6 months

Commissioner Littell indicated that early indicators were that FERC was going to establish a 6-month timeframe; however, there are a number of factors to consider with respect to the various required approvals. The deadline for processing the applications is unclear.

Board member M. Wing Goodale asked if the Board would process these applications individually or if the proceedings would be consolidated. He also asked if there is a need for two such facilities in Maine.

Commissioner Littell responded that these are two separate applications, which would be processed individually. He noted that there are several LNG projects being considered in the United States and Canada. Canada has two proposed projects being considered; and the one in St. John is definitely moving forward. In the United States, the Boston offshore facility continues to move forward and the Fall River LNG project has strong opposition. There are approximately 3 additional facilities being discussed for the Northeast.

Board member Nancy Ziegler asked about the proximity of the two proposed projects and if the Department provides guidance on site location.

Commissioner Littell advised that the Quoddy Bay project is primarily located on Passamaquoddy land, with a proposed fuel storage facility located in the Town of Perry. The Downeast project is located in Robinson. Robinson town officials have voted in support of this proposed project.

Ms. Ziegler asked a follow-up question about the competitiveness of the two projects.

The Conservation Law Foundation has suggested the development of a regional plan to identify the best site(s) for LNG facilities; however, the Department's role is to administer the rules and process the applications that are filed as opposed to identifying sites for potential facilities. The Commissioner noted that, one of the developers definitely considers it advantageous to obtain state permits opposed to pursuing the question of any federal preemption.

Dragon Products The federal Agency for Toxic Substances and Disease Registry (ATSDR) will conduct a preliminary site visit of the Thomaston facility on November 30, 2006. Additionally, representatives from ATSDR will meet with some of the neighbors.

Hampden Landfill: The Department has approved the schedule of compliance entered into between Casella and the Town of Hampden regarding closure of the landfill. The schedule of compliance reflects the vote of the Town Council and sets a closure date of December 2009. The Hampden site is scheduled to close by the end of this decade, which is one of two private solid waste landfills.

Chapter 335, Significant Wildlife Habitat. The Natural Resource Committee will be conducting hearings on November 21st and/or 22nd to consider shorebird habitat issues raised Downeast.

Blue Ribbon Commission on Solid Waste The Governor's Blue Ribbon Commission considered the rulemaking petition that was submitted to the Department by We the People yesterday. Their decision is pending.

SAPPI: SAPPI's application to burn wood from construction and demolition debris (CDW) will be the subject of a public hearing in Westbrook tonight. Mark Hyland, Acting Director, Bureau of Remediation and Waste Management is the presiding officer.

Westbrook The Department has issued a second draft permit for public comment on the application by Casella for a waste processing facility in Westbrook.

Board member Ernest Hilton asked if this is the same facility that the Board licensed 5 years ago?

Commissioner Littell confirmed that this is the same property. The application requests that the site be licensed as a processing facility for MSW (municipal solid waste) and CDD (construction and demolition debris), and is an amendment to that earlier permit.

BEP Jurisdiction. The Department recently denied several requests for Board jurisdiction because the projects did not meet the standards for jurisdiction.

- **Red Shield** The Department received a number of requests for Board jurisdiction regarding the amendments to the air permit and the license transfer of Georgia Pacific to Red Shield. The amendment to the air permit includes a schedule of compliance for carbon monoxide requiring some immediate fixes with testing to evaluate the effectiveness of the fixes on the boilers by April 1st. Additionally, if testing demonstrates that the measures for control of carbon monoxide are not adequate, the licensee must file a plan for addressing these deficiencies.
- **Madawaska** Mr. Cayer submitted a letter seeking a pre-application meeting before the Board for a boat ramp project at Long Lake in Madawaska. Mr. Cayer has provided suggestions for the location of the ramp.
- **Ellsworth** An application for the Ellsworth Commons, a 21 lot subdivision.

B. CHAIRMAN'S COMMENTS: None

C. EXECUTIVE ANALYST COMMENTS:

Chairman Scott conducted a pre-hearing conference with parties regarding fish and eel passage at four hydropower projects on the Kennebec River.

Board member Ernest Hilton asked about the date for the public hearing

The Executive Analyst commented that, keeping the pending LNG projects in mind, the target hearing date is early February 2007.

Board member Nancy Ziegler asked about the availability of the video of the Androscoggin River taken during the Board's plane flight along the river

The Administrative Assistant explained that December 21st is a target date for a narrated review of the video which shows the river system, the location of the facilities at issue in the Board proceeding, and land use along the river

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: Reviewed

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

1. BEP Minutes – August 3, 2006 (approval)

Board voted (8-0-1-1) on a motion to approve consent agenda item 1 as presented

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Donald Guimond, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler supported the motion. Board member Nancy Anderson abstained. Board member Denis Culley was absent.

2. BEP Minutes – August 17, 2006 (approval)

Board voted (9-0-0-1) on a motion to approve consent agenda item 2 as presented.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Donald Guimond, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler supported the motion. Board member Denis Culley was absent.

3. BEP Minutes – September 7, 2006 (approval)

Board voted (7-0-2-1) on a motion to approve consent agenda item 3 as corrected on page 5 of the minutes concerning the detail of the vote on agenda items 4 and 5 correcting: ~~voted opposed to the motion~~ in support of the motion

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Donald Guimond, Richard Gould, Ernest Hilton and Virginia Plummer voted to support the motion. Board members Matt Scott and Nancy Ziegler abstained. Board member Denis Culley was absent.

4. BEP Minutes – October 5, 2006 (approval)

Board voted (9-0-0-1) on a motion to approve consent agenda item 4 as presented.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M Wing Goodale, Donald Guimond, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler supported the motion Board member Denis Culley was absent

5. BEP Minutes – October 19, 2006.(approval)

Board voted (8-0-1-1) on a motion to approve consent agenda item 5 as presented

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Donald Guimond, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler supported the motion Board member Nancy Anderson abstained Board member Denis Culley was absent.

Board voted (9-0-0-1) on a motion to approve consent agenda items 6, 7, 8 and 9 as presented.

6. ROWE FORD SALES, Westbrook – Administrative Consent Agreement (BAQ)
7. ROTARY 1 HR CLEANERS, INC AND PAUL POULIN, Augusta – Administrative Consent Agreement and Enforcement Order (BRWM)
8. NANKERVIS TRUCKING, INC, Lamoine – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)
9. MANTER CONSTRUCTION OF MAINE, INC, Sidney – Administrative Consent Agreement (BLWQ – Land)

Board members Nancy Anderson, Elizabeth Ehrenfeld, M Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion Board member Denis Culley was absent

III. Regular Agenda

1 CHAPTER 305, PERMIT BY RULE STANDARDS and CHAPTER 310, WETLANDS AND WATERBODIES PROTECTION RULES / AMENDMENTS (adoption*)

Staff: Hetty Richardson, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to adopt amendments to Chapter 305, Permit By Rule Standards and Chapter 310, Wetlands and Waterbodies Protection Rules. The vote was taken pursuant to 38 M R S A Sections 341-D(1-B) and 480-H with the following amendments to Chapter 305:

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, M Wing Goodale, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion Board member Denis Culley was absent

Chapter 305, Sections 3(C)(15), 4(C)(14), 9(C)(13), 10(C)(17), 11(B)(16), 13(C)(6), and 15(C)(12) regarding the use of chemically treated wood material in coastal waters

The use of untreated lumber is preferred . . (CCA) may be used **only if necessary and only** if use is allowed under federal law. .

Chapter 305, Section 20,C Standards, subsection (2) regarding numbering of sub-paragraphs.

(e) (e) Within 30 days ..

PRELIMINARY AMENDMENT VOTES:

The Board voted (7-2-0-1) to include the following language change in the motion for adoption of Chapter 305.

The use of untreated lumber is preferred. (CCA) may be used **only if necessary and only** if use is allowed under federal law .

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, M Wing Goodale, Donald Guimond, Ernest Hilton, and Matt Scott voted to support the motion. Board members Virginia Plummer and Nancy Ziegler opposed Board member Denis Culley was absent

The Board voted (2-7-0-1) on a motion to replace sub-paragraph (c) of Section 16(B)(3) Submissions on page 8 of the rule with new sub-paragraph (c) as recommended by Stephen Dickson (Maine Geological Survey) in the response to comments section which would require Universal Transverse Mercator, State Plane, or Latitude and Longitude coordinates and most recent vertical datum (NAVD88) to record location of seawalls.. Motion Failed

Board members Ernest Hilton and Matt Scott voted to support the motion. Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Virginia Plummer and Nancy Ziegler voted opposed. Board member Denis Culley was absent

2 CHAPTER 587, IN-STREAM FLOW AND WATER LEVEL STANDARDS / NEW (provisional adoption)

Staff: David Courtemanch, Bureau of Land & Water Quality

The Board voted (8-0-1-1) on a motion to provisionally adopt Chapter 587, In-stream Flow and Water Level Standards with the following amendments:

Amendments.

Section 1.D Existing Community Water Systems operating with a Community Water System Withdrawal Certificate. New sentence at the end of this section: **The intent of the certification process shall be to move towards achievement of water quality standards.**

Section 1 D Existing Community Water Systems operating with a Community Water System Withdrawal Certificate. Second paragraph

Any conditions included in an amended Community Water System Withdrawal Certificate must be reviewed ~~and approved~~ by the Drinking Water Program at the Department .

Section 7A. New sentence at end of the first sentence in 7A: The information for the filing shall be developed **with the assistance of the Department.**

Section 8 B. replace with the following:

8B. Hydropower projects. Flows and water levels for hydropower projects as defined in 38 M.R.S.A. § 632(3) shall be established through the Water Quality Certification process pursuant to Section 401 of the Clean Water Act, 33 U.S.C. §1341, or a permit issued pursuant to the Maine Waterway Development and Conservation Act, 38 M.R.S.A. §630 et. seq., and therefore shall not be subject to or established through this Chapter, notwithstanding any other provision in this Chapter.

The vote was taken pursuant to 38 M.R.S A Sections 341-D(1-B) and 470-H.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, M Wing Goodale, Donald Guimond, Ernest Hilton, Matt Scott and Nancy Ziegler voted to support the motion Board member Virginia Plummer voted opposed Board member Denis Culley was absent.

**At its meeting the Board will accept additional public comment on a rule proposed for adoption. Additional public comment will be accepted only if it is directly related to comments received during the formal rulemaking comment period or is in response to proposed changes. Comments must be presented orally except by leave of the Chairman*

Next Regular Board Meeting –Thursday, December 7, 2006 – Holiday Inn, Augusta